

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Child and Family Services Agency

Office of General Counsel



MLA 07- 04 (Reinstatement –
Restoration of Annual Leave)
March 6, 2007

MEMORANDUM OF LEGAL ADVICE

Issue

Whether more than 240 hours of annual leave may be restored to an employee of the Child and Family Services Agency ("CFSA") after an appropriate authority has ordered that the employee be reinstated and be reimbursed all pay and benefits lost as a result of his or her removal?

Conclusion

For the reasons stated below, we have concluded that given that the CFSA is required to adhere to the District government's laws, regulations, rules, policies, and practices pertaining to employee compensation, and that the District in some cases may restore annual leave in excess of the maximum amount of 240 hours, when applicable, a CFSA employee may be credited with restored leave beyond the 240-hour limit.

Analysis

Legal provisions pertaining to employees of the District government are contained in the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("CMPA"), as amended (D.C. Law 2-139; D.C. Official Code §§ 1-601.01 *et seq.*, 1-602.01) (2006). In addition, the Director of the CFSA has personnel authority to administer all or part of a personnel management program under the CMPA and to implement the ensuing rules and regulations for all employees of the agency (D.C. Official Code §§ 1-603.01(14) and (17)(XX), 1-604.06(b)(17)), 4-1303.01a(a), 4-1303.03(a-1)(8)) (2006 and Supp. 2006). The Director does not, however, have pay authority and therefore, he or she must comply with the District government's compensation policies, the CMPA, the D.C. Personnel Regulations (the "regulations") (D.C. Official Code §§ 1-204.22, 1-604.04, 1-611.01 *et seq.*) (2006).

To that end, the regulations pertaining to back pay upon reinstatement provides that an employee who is found by an appropriate authority (i.e., the Office of Employee Appeals) to have undergone an unjustified or unwarranted personnel action¹ resulting in the withdrawal or

¹ An "appropriate authority" is an entity having authority to correct or direct the correction of an unjustified or unwarranted personnel action. An "unjustified or unwarranted personnel action" is an act of commission or of omission that is subsequently determined to have violated or improperly applied the requirements of a nondiscretionary provision and thereby resulted in the withdrawal, reduction, or denial of all or any part of the pay or benefits otherwise due an employee (§ 1149.1 of the regulations).

reduction of all or part of his pay or benefits, shall be entitled on correction of the personnel action, to back pay which includes annual leave (§§ 1149.1 - 1149.2 of the regulations).

Further, § 1149.10 of the regulations states that in recomputing back pay and benefits for the period covered by the corrective action, the employee is not to be granted more pay or benefits than he would have been entitled by law, Mayor's Order, regulation, or agency policy. To that end, Chapter 12, Part II, Subpart 4, § 4.9(J) of the District Personnel Manual states that annual leave which is not used may accumulate from year to year, but only to the maximum allowable leave amount of 30 days (240 hours), unless any of the follow three conditions are met:

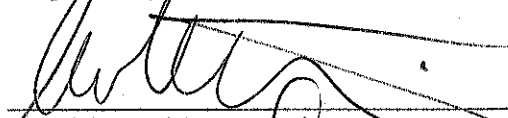
- There is a loss of annual leave due to administrative error;
- There are exigencies of the public business when annual leave was scheduled in advance; or
- Illness or injury of the employee when such annual leave was scheduled in advance.

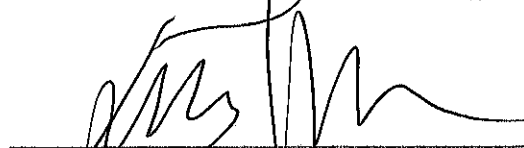
In the case of the loss of annual leave due to "administrative error," leave is to be restored to the employee and be available for a period of two years from the date of restoration (Chapter 12, Part II, Subpart 4, § 4.9(L) of the regulations) (the other two conditions do not apply in the circumstances presented here).

The more specific issue is whether an "unjustified or unwarranted personnel action" is an "administrative error," and is the employee entitled to more than 240 hours of annual leave. Unfortunately, the term "administrative error" is not clearly defined in the cited provisions. Nonetheless, it is helpful to look at the District government's practice in reinstatement cases such as in the instant matter.

It is the understanding of the Office of General Counsel that in cases such as the one at issue, it has been the practice of the District to restore annual leave, in excess of the maximum amount of 240 hours, in a separate account for use by the employee within a two-year period. Thus, in light of the District government's practice, it appears that when an appropriate authority has ordered that an employee be reinstated and be reimbursed all pay and benefits, a CFSA employee may be credited with several hours of restored annual leave in excess of the 240-hour limit, to cover the period after removal and up to reinstatement.²

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² Similarly, in the case of back pay due to an unjustified or unwarranted personnel action, the federal government permits the restoring of annual leave, in excess of the maximum leave accumulation permitted by law, to be credited to a separate leave account for the employee's use within a prescribed time period (5 U.S.C. 5596, 5 C.F.R. 550.805).